

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

NOT FOR PUBLICATION

BARRY MITCHELL,

Petitioner,

- versus -

JOHN P. LEMPKE,

Respondent.

ORDER

10-CV-1696 (JG)

JOHN GLEESON, United States District Judge:

Barry Mitchell petitioned for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his January 2005 conviction in New York State Supreme Court, Queens County, of one count of burglary in the first degree. In a Memorandum and Order dated October 4, 2010, I denied the petition. Mitchell has moved pursuant to Rule 60(b) of the Federal Rules of Civil Procedure for relief from the October 6, 2010 judgment denying the petition.

Mitchell contends that the respondent committed a fraud on the court by altering the original photograph array that I ordered counsel to supply to the court, *see* Order dated August 25, 2010, a copy of which was sent to Mitchell, *see* Memorandum and Order at 14 n.11, October 4, 2010, ECF No. 11; Photograph Array, Sept. 24, 2010, ECF No. 10. He apparently suggests that the fraud is demonstrated by a photostatic copy of the array he received from his attorney, a copy of which is attached to Mitchell's motion. *See* Mot. Vacate J. Ex. D., June 17, 2011, ECF No. 17.

I have reviewed Mitchell's submission and conclude it has no merit. Accordingly, his motion for relief from the judgment is denied.

So ordered.

John Gleeson, U.S.D.J.

Dated: March 28, 2012
Brooklyn, New York